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4 NICHIA CORPORATION,

No. C-06-0162 MMC

5 Plaintiff,  
6 v.  
7

**SECOND AMENDED ORDER  
CONSTRUING CLAIMS**

8 SEOUL SEMICONDUCTOR CO., LTD., et  
9 al.,  
10

11 Defendants  
12 \_\_\_\_\_ /  
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14 In the above-titled action, plaintiff Nichia Corporation alleges that defendants Seoul  
15 Semiconductor Co., Ltd., and Seoul Semiconductor, Inc., have infringed four design  
16 patents. Before the Court are the parties' respective proposed claim constructions, each  
17 filed August 7, 2007, pursuant to the Court's order of August 1, 2007.<sup>1</sup>

18 "In construing a design patent claim, the scope of the claimed design encompasses  
19 its visual appearance as a whole, and in particular the visual impression it creates."  
20 Contessa Food Products, Inc. v. Conagra, Inc., 282 F. 3d 1370, 1376 (Fed. Cir. 2002)  
21 (internal quotation and citation omitted). A proper claim construction consists of a "verbal  
22 description" of the visual impression created by the claimed design. See Durling v.  
23 Spectrum Furniture Co., 101 F. 3d 100, 104 (Fed. Cir. 1996).

24 Having considered the parties' respective filings, as well as the portions of the  
25 parties' pending motions for summary judgment in which claim construction issues are  
26 addressed, the Court construes the design claims as follows:  
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1The sole amendment is to substitute, by stipulation of the parties, the word  
"recessed" for the word "rearwardly-extended" at page 2, line 10.

1 **A. United States Design Patent No. 491,538 (“538 Patent”)**

2 The Court construes the ‘538 Patent as claiming an ornamental design for a light  
3 emitting diode (“LED”) comprising:

4 (1) an elongated generally rectangular body having:

5 (a) a rear portion with top, bottom, and side surfaces that taper inwardly, and  
6 which portion is joined to a front portion by a parting line that bisects the body lengthwise,

7 (b) the center section of its rear surface recessed and tapered outwardly  
8 toward the left and right sections of the rear surface,

9 (c) its rear surface having a circular protrusion centered thereon, the circular  
10 protrusion being centered on a recessed square surface and being flanked by a rectangular  
11 recess to its left and by a rectangular recess to its right, and the outer surface of the  
12 circular protrusion having the contour of a smooth wave form,

13 (d) the lateral ends of its bottom surface raised,

14 (e) a small angled cathode mark at the upper left front corner of the front  
15 portion, wherein the cathode mark, when viewed from the front, forms an isosceles right  
16 triangle, and when viewed from the top or from the left side, forms a square, and

17 (f) its front surface having an elongated opaque window with peaked top and  
18 bottom rims and circularly-curved left and right rims; and

19 (2) two spaced-apart substantially right-angled electrodes,<sup>2</sup> one on either side of the  
20 body, each electrode:

21 (a) protruding laterally from the body, and

22 (b) having a vertical leg and a substantially horizontal leg joined by a curved  
23 radius such that the electrode has an “L” shape when viewed from the right side of the LED  
24 and a backward “L” shape when viewed from the left side of the LED, the vertical and

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26 <sup>2</sup>In its proposed claim construction, plaintiff refers to said two elements as  
27 “brackets”; in their proposed claim construction, defendants refer to said two elements as  
28 “structure.” Both parties, however, in their respective pending motions for summary  
judgment, refer to said two elements more specifically as “electrodes.” (See Defs.’ Mot. for  
Summ. J., filed June 15, 2006, at 5:12, 17, 24-26; Pl.’s Mot. for Summ. J., filed June 16,  
2006, at 4:1-2, 13:15-16.)

1 substantially horizontal legs having parallel, flat, exposed surfaces, the substantially  
2 horizontal leg extending rearwardly and being substantially flush with the body's bottom  
3 surface, a portion of the substantially horizontal leg extending below the lateral end of the  
4 raised bottom surface of the body, the vertical leg having a flat top and a rounded outer  
5 corner, and the height of the vertical leg being more than a majority of the body's height.

6 **B. United States Design Patent No. 490,784 ("748 Patent")**

7 The Court construes the '748 Patent as claiming an ornamental design for an LED  
8 comprising:

9 (1) an elongated generally rectangular body having:

10 (a) a rear portion with top, bottom, and side surfaces that taper inwardly, and  
11 which portion is joined to a front portion by a parting line that bisects the body lengthwise,  
12 (b) the center section of its rear surface recessed and tapered outwardly  
13 toward the left and right sections of the rear surface,

14 (c) the lateral ends of its bottom surface raised, and

15 (d) its front surface having an elongated transparent window with peaked top  
16 and bottom rims and circularly-curved left and right rims; and

17 (2) two spaced-apart substantially right-angled electrodes, one on either side of the  
18 body, each electrode:

19 (a) protruding laterally from the body, and

20 (b) having a vertical leg and a substantially horizontal leg joined by a curved  
21 radius such that the electrode has an "L" shape when viewed from the right side of the LED  
22 and a backward "L" shape when viewed from the left side of the LED, the vertical and  
23 substantially horizontal legs having parallel, flat, exposed surfaces, the substantially  
24 horizontal leg extending rearwardly and being substantially flush with the body's bottom  
25 surface, a portion of the substantially horizontal leg extending below the lateral end of the  
26 raised bottom surface of the body, the vertical leg having a flat top and a rounded outer  
27 corner, and the height of the vertical leg being more than a majority of the body's height.

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1 **C. United States Design Patent No. 503,388 ("388 Patent")**

2 The Court construes the '388 Patent as claiming an ornamental design for an LED  
 3 comprising two spaced-apart right-angled electrodes, each electrode being laterally  
 4 attached to the body of an LED<sup>3</sup> and having a vertical leg and a horizontal leg joined by a  
 5 curved radius such that the electrode has an "L" shape when viewed from one side of the  
 6 LED and a backward "L" shape when viewed from the other side of the LED, the vertical leg  
 7 and horizontal leg having parallel, flat, exposed surfaces, the horizontal leg extending  
 8 rearwardly, a portion of the horizontal leg protruding inwardly, and the vertical leg having a  
 9 flat top and a rounded outer corner.

10 **D. United States Design Patent No. 499,385 ("385 Patent")**

11 The Court construes the '385 Patent as claiming an ornamental design for an LED  
 12 comprising two spaced-apart substantially right-angled electrodes, each electrode being  
 13 laterally attached to the body of an LED, and having a vertical leg and a substantially  
 14 horizontal leg joined by a curved radius such that the electrode has an "L" shape when  
 15 viewed from one side of the LED and a backward "L" shape when viewed from the other  
 16 side of the LED, the vertical leg and substantially horizontal leg having parallel, flat,  
 17 exposed surfaces, the substantially horizontal leg extending rearwardly, a portion of the  
 18 substantially horizontal leg protruding inwardly, and the vertical leg having a flat top and a  
 19 rounded outer corner.

20 **IT IS SO ORDERED.**

21  
 22 Dated: October 22, 2007

  
 23 MAXINE M. CHESNEY  
 24 United States District Judge

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 26 <sup>3</sup>Although, as noted, the claimed design is a "design for a light emitting diode," see  
 27 '388 Patent at 1, col. 2, the patentee has illustrated the body of the LED in broken lines,  
 28 thus indicating the body is "immaterial" to the claimed design, see *In re Blum*, 374 F. 2d  
 904, 907 (C.C.P.A. 1967), i.e., that the scope of the claimed design is limited to the  
 electrode portions of the LED.